

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 ANTHONY W. JOHNSON, JR.,) No. C 12-00722 EJD (PR)
12 Plaintiff,) ORDER DIRECTING DEFENDANT
13 v.) WARRINGTON TO FILE
14 R. W. FRITZ, et al.,) DISPOSITIVE MOTION OR NOTICE
15 Defendants.) REGARDING SUCH MOTION;
) DISMISSING MOTION FOR LEAVE
) TO PROCEED *IN FORMA PAUPERIS*
) ON APPEAL
16 _____) (Docket No. 101)
17

18 Plaintiff, a California inmate, filed the instant civil rights action in pro se
19 pursuant to 42 U.S.C. § 1983 against prison officials at the Salinas Valley State
20 Prison (“SVSP”) for unconstitutional acts. On September 30, 2013, the Court
21 granted Defendants R. W. Fritz, A. Hedgpeth, T. Selby, B. Martinez, P. Nickerson,
22 B. Hedrick, G. Biaggini, Ms. Park, A. Meden, W. Muniz, Dr. Card and G. Ramirez’s
23 motion for summary judgment, and dismissed all claims against them with prejudice.
24 (Docket No. 96.)

25 The sole remaining defendant, Dr. J. Warrington,¹ was ordered to show cause
26 why default judgment should not be entered against him. (Id.) On October 28,
27

28 ¹Plaintiff originally spelled Defendant’s name as “Worrington” in his
complaint. Defendant’s response indicates that the correct spelling is “Warrington.”

1 2013, Defendant Warrington filed a timely response, indicating that he first received
2 notice of this action against him on October 4, 2013, and has since obtained counsel.
3 (See Docket No. 99.) Good cause appearing, the Court finds Defendant Warrington
4 is not in default. (Warrington Decl. at 2; Docket No. 100.)

5 Plaintiff has filed a motion for leave to proceed in forma pauperis ("IFP") on
6 appeal. (Docket No. 101.) Plaintiff was never granted IFP status in this action
7 because he paid the filing fee in full at the outset. (See Docket No. 10.)
8 Accordingly, Plaintiff must file this motion directly with the United States Court of
9 Appeals for the Ninth Circuit who will conduct an independent review of the record
10 to determine whether the appeal is frivolous. Accordingly, the motion is
11 DISMISSED to filing it in the Ninth Circuit.

CONCLUSION

14 For the reasons stated above, Defendant Dr. J. Warrington shall file a motion
15 for summary judgment or other dispositive motion with respect to the claims against
16 him **no later than fifty-six (56) days** from the date this order is filed. Briefing shall
17 proceed thereafter, in accordance with the schedule and instructions set forth in the
18 Court's Order of Service, filed August 9, 2012, (Docket No. 16).

19 The Clerk shall update the docket to reflect Defendant Dr. J. Warrington's
20 correct name.

21 This order terminates Docket No. 101.

22 DATED: 10/30/13



EDWARD J. DAVILA
United States District Judge